

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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AUG 29 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Request of Limited Modification of)
LATA Boundaries to Provide ELCS)
Between the Kopperl)
Exchange and the Meridian)
Exchange.)

96-159

DOCKET FILE COPY ORIGINAL

PETITION

I. INTRODUCTION

Southwestern Bell Telephone Company (SWBT), pursuant to Section 3(25) of the Communications Act of 1934, as amended,¹ and in accordance with the guidelines established in the Commission's Memorandum Opinion and Order (MO&O) released July 15, 1997 in CC Docket No. 96-159,² hereby makes application for a limited modification of LATA boundaries to provide ELCS between the Kopperl exchange and the Meridian exchange.

II. SUPPORTING INFORMATION

As prescribed in paragraph 23 of the aforementioned Commission MO&O, SWBT provides the following information in support of its application:

1. Type of service: Flat-rate, non-optional Expanded Local Calling (ELC);
2. Direction of service: Two-way;

¹ The Communications Act of 1934, as amended, 47 U.S.C. *et al.*

² Memorandum Opinion and Order, Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service at Various Locations, CC Docket No. 96-159, released July 15, 1997. By way of this MO&O the Commission adopted a format for and criteria under which such petitions would be granted. The format and criteria are detailed in paragraphs 23 and 24.

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3. Exchanges involved: Kopperl in the Dallas, TX LATA and Meridian in the Waco, TX LATA;
4. Name of carriers: Kopperl of Texas ALLTEL and Meridian of Southwestern Bell Telephone;
5. State commission approval(s): See Attachment A;
6. Number of access lines or customers: The Kopperl exchange has 340 access lines, and the Meridian exchange has 1,198 access lines;
7. Usage data: Usage data is not available to Southwestern Bell Telephone. SWBT does not currently carry traffic across LATA boundaries;
8. Poll results: Percentage of Kopperl customers returning ballots who voted in favor of ELC to Meridian: Greater than 70 percent. Where SWBT is the petitioning exchange, there is no proposed rate increase. Where SWBT is not the petitioning exchange, SWBT does not have information as to any proposed rate increase.
9. Community of interest statement: The Public Utility Commission of Texas includes a Community of Interest Finding in their Order(s). See Attachment A.
10. Map: See Attachment B; and,
11. Other pertinent information: None

III. *PRIMA FACIE* SHOWING

SWBT believes that it has made a *prima facie* case supporting grant of the proposed modification because the instant ELCS petition (1) has been approved by the state commission; (2) proposes only traditional local service (i.e., flat-rate, non-optional ELCS); (3) indicates that the state commission found a sufficient community of interest to warrant such service; (4) documents this community of interest through such evidence as poll results and descriptions of the communities involved; and, (5) involves a limited number of customers or

access lines. These requirements for a *prima facie* case are detailed in the aforementioned Commission MO&O paragraph 24.

IV. CONCLUSION

Wherefore, SWBT request that the Commission approve its application for a limited modification of LATA boundaries to provide ELCS between the Kopperl exchange and the Meridian exchange.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

By Marjorie Morris Weisman

Robert M. Lynch

Durward D. Dupre

Mary W. Marks

Marjorie M. Weisman

Attorneys for

Southwestern Bell Telephone Company

One Bell Center, Room 3520

St. Louis, Missouri 63101

(314) 235-2507

AUGUST 29, 1997

DOCKET NO. 13835

PETITION FOR EXPANDED LOCAL	§	PUBLIC UTILITY COMMISSION
CALLING SERVICE FROM THE	§	
MURCHISON EXCHANGE TO THE	§	OF TEXAS
EXCHANGES OF LINDALE-SWAN AND	§	
TYLER	§	

ORDER NO. 8

DOCKET NO. 14151

PETITION FOR EXPANDED LOCAL	§	PUBLIC UTILITY COMMISSION
CALLING SERVICE FROM THE IRENE	§	
EXCHANGE TO THE EXCHANGE OF	§	OF TEXAS
CORSICANA	§	

ORDER NO. 7

DOCKET NO. 14160

PETITION FOR EXPANDED LOCAL	§	PUBLIC UTILITY COMMISSION
CALLING SERVICE FROM THE BEN	§	
WHEELER EXCHANGE TO THE	§	OF TEXAS
EXCHANGE OF TYLER	§	

ORDER NO. 8

DOCKET NO. 14250

PETITION FOR EXPANDED LOCAL	§	PUBLIC UTILITY COMMISSION
CALING SERVICE FROM THE MONTALBA	§	
EXCHANGE TO THE EXCHANGE OF	§	OF TEXAS
TYLER	§	

~~ORDER NO. 4~~

DOCKET NO. 14256

PETITION FOR EXPANDED LOCAL	§	PUBLIC UTILITY COMMISSION
CALLING SERVICE FROM THE KOPPERL	§	
EXCHANGE TO THE EXCHANGE OF	§	STATE OF TEXAS
MERIDIAN	§	

ORDER NO. 5

DOCKET NO. 13835
DOCKET NO. 14151
DOCKET NO. 14160
DOCKET NO. 14250
DOCKET NO. 14256
DOCKET NO. 14465
DOCKET NO. 14310

ORDER NO. 8
ORDER NO. 7
ORDER NO. 8
ORDER NO. 4
ORDER NO. 5
ORDER NO. 5
ORDER NO. 3

DOCKET NO. 14465

PETITION FOR EXPANDED LOCAL	§	PUBLIC UTILITY COMMISSION
CALLING SERVICE FROM THE JARRELL	§	
EXCHANGE TO THE EXCHANGES OF	§	OF TEXAS
BELTON AND TEMPLE	§	

ORDER NO. 5

DOCKET NO. 14310

PETITION FOR EXPANDED LOCAL	§	PUBLIC UTILITY COMMISSION
CALLING SERVICE FROM THE CHICO	§	
EXCHANGE TO THE EXCHANGE OF	§	OF TEXAS
BOWIE	§	

ORDER NO. 3
DIRECTING LOCAL EXCHANGE COMPANY
TO FILE FOR LIMITED MODIFICATION

On July 28, 1997, the Commission Staff recommended that, Southwestern Bell Telephone Company (SWBT), in light of the recent Federal Communications Commission (FCC) order addressing the procedures for SWBT to request limited modifications of local access and transport area (LATA) boundaries for the provision of expanded local calling service (ELCS), file a request with the FCC, within thirty days of the effective date of this order, in accordance with the procedures outlined *In the Matter of Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations*, CC Docket No. 96-159, FCC 97-244, (rel. July 15, 1997) *Memorandum Opinion and Order*, §§ 23 & 24.

A community of interest has previously been established in these cases and a waiver request was filed by SWBT with the Department of Justice under the *Modified Final Judgment*.

**DOCKET NO. 13835
DOCKET NO. 14151
DOCKET NO. 14160
DOCKET NO. 14250
DOCKET NO. 14256
DOCKET NO. 14465
DOCKET NO. 14310**

**ORDER NO. 8
ORDER NO. 7
ORDER NO. 8
ORDER NO. 4
ORDER NO. 5
ORDER NO. 5
ORDER NO. 3**

**ATTACHMENT A
SHEET 3**

SWBT shall file within 30 days of the effective date of this order, a request for limited modification of the LATA boundaries. Additionally, within 10 days of the receipt of orders or notices from the FCC relating to these petitions, SWBT shall file such orders or notices with the Commission.



**ISSUED BY THE OFFICE OF POLICY DEVELOPMENT
ON BEHALF OF THE PUBLIC UTILITY COMMISSION OF TEXAS
ON THE 31st DAY OF JULY, 1997**

q-share-els waiver.doc

jm/DB

DOCKET NO. 13543

**PETITION FOR EXPANDED LOCAL
CALLING SERVICE FROM THE
NORMANGEE EXCHANGE TO THE
BRYAN-COLLEGE STATION EXCHANGE**

§
§
§
§

**PUBLIC UTILITY COMMISSION
OF TEXAS**

ORDER NO. 6

DOCKET NO. 14265

**COMPLAINT OF THE NORMANGEE-
FLYNN- HILLTOP LAKES SUBSCRIBERS
TO FEES FOR EXPANDED LOCAL
CALLING SERVICE RESULTING
FROM PROJECT NO. 12875**

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§
§
§

**PUBLIC UTILITY COMMISSION
OF TEXAS**

**ORDER NO. 3
ORDER OF CLARIFICATION**

Docket No. 14265 was recently reassigned to the undersigned Administrative Law Judge (ALJ). Upon review of the file, it has become apparent that the docket is interwoven with the issues in Docket No. 13543. For this reason, the ALJ has a proposal for the disposition of the two dockets. Parties **SHALL** file any comments on the proposed procedures by 3:00 p.m., October 4, 1995. If the ALJ does not receive any comments concerning the proposal, the ALJ will proceed to process the two cases in accordance with the below stated proposal.

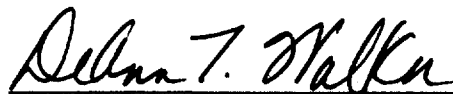
The order to dismiss relating to Docket No. 13543 will be withdrawn from the October 11, 1995, open meeting. A Proposed Interim Order will be issued in Docket No. 13543 to address the request for expanded local calling service (ELCS) from Normangee to Bryan-College Station.¹ The affidavit of community of interest filed in Docket No. 14265 shall be used in Docket No. 13543. Based upon the pleadings of General Counsel in Docket No. 14265, the ALJ believes that the complainants are concerned about the Bryan-College Station Exchange and not the remaining 15 exchanges. Thus, the

¹ A Proposed Order has previously been issued in Docket No. 13822 addressing the requested ELCS between Hilltop Lakes and Bryan-College Station.

ALJ proposes to dismiss the complaint in accordance with P.U.C. PROC. R. 22.181(b) based upon the Proposed Interim Order in Docket No. 13543 and the representations of General Counsel that the Bryan-College Station Exchange is the only one desired by the petitioners. Lastly, the ALJ proposes that the remaining 15 exchanges in Docket No. 13543 be dismissed in accordance with P.U.C. PROC. R. 22.181(b) based upon the representations of General Counsel that the Bryan-College Station Exchange is the only one desired by the petitioners.

SIGNED AT AUSTIN, TEXAS the 20th day of September 1995.

PUBLIC UTILITY COMMISSION OF TEXAS

A handwritten signature in cursive script, reading "Deann T. Walker", is written over a horizontal line.

**DEANN T. WALKER
ADMINISTRATIVE LAW JUDGE**

DOCKET NO. 14256

**PETITION FOR EXPANDED LOCAL
CALLING SERVICE FROM THE
KOPPERL EXCHANGE TO THE
MERIDIAN AND WHITNEY EXCHANGES**

§
§
§
§
§

**PUBLIC UTILITY COMMISSION
OF TEXAS**

INTERIM ORDER

On behalf of the Public Utility Commission of Texas (Commission) the Administrative Law Judge (ALJ) finds that this docket is based on a evidentiary record and has been processed in accordance with applicable statutes and Commission rules. There were no disputed issues in this petition.

The following findings of fact and conclusions of law are **ADOPTED**:

Findings of Fact

1. The expanded toll-free local calling service (ELCS) petition that is the subject of this Interim Order request non-optional "to and from calling" between the Kopperl Exchange and Meridian and Whitney Exchanges.
2. The processes for petitioning and balloting included notice that the service would have a fee of up to \$3.50 for residential and \$7.00 for business customers on a non-optional basis.
3. Judge Harold H. Greene established the LATA boundaries for Southwestern Bell Telephone Company (SWB) in the Modified Final Judgment, *United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982) and *United States v. Western Elec. Co., Inc.*, 569 F.Supp. 990 (D.D.C. 1983), and for GTE Southwest, Inc. and Contel of Texas, Inc. (collectively GTE) in the Decree, *United States v. GTE Corp.*, 1985-1 Trade Cas (CCH) §66,355 (D.D.C. 1985). (The collective orders of Judge Greene will hereinafter be referred to as MFJ.)
4. A LATA is a geographic area in which SWB and GTE can provide telecommunication services within its boundaries. In the MFJ, Judge Greene restricted the two local exchange carriers from

providing interLATA transport. In order for the companies to span the LATA boundaries established by the MFJ, they must obtain a waiver from Judge Greene.

5. Judge Greene has relied upon the following issues for SWB or GTE to obtain a waiver of the MFJ: impact on competition; whether the calling plan has the attributes of a long distance toll call; and whether a community of interest exist between the two exchanges.

6. On October 19, 1993, the Commission amended P.U.C. SUBST. R. 23.49 by adding a section pertaining to ELCS in accordance with Senate Bill 632, (Act of May 11, 1993, 73rd Leg. R.S., ch.271, 1993 Tex. Sess. Law Serv. 1276 (Vernon))(to be codified as an amendment to TEX. REV. CIV. STAT. ANN., Art. 1446c, § 93A) and § 93A of the Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1994). The rule became effective on December 7, 1993.

7. The statute and the rule referred to in Finding of Fact No. 6 provide certain requirements for petitioning exchanges to meet in order to receive ELCS. One such requirement is a showing of a community of interest.

8. In recommending approval of various waivers before Judge Greene, the Department of Justice (DOJ) has relied upon an affirmative finding of the Public Utility Commission of Texas that a community of interest exists between two exchanges, often based on a vote of the responding subscribers, and whether the two exchanges share such needs as local governments; employment; shopping; and use of educational and medical services.

9. An affirmative vote of 70 percent of the subscribers responding to the ballot is necessary for an ELCS petition to proceed at the Commission. The percentage of affirmative votes from those subscribers returning ballots is a compelling showing of a community of interest. This factor can and should be considered with the same weight as other factors, such as the sharing of local government, schools, employment, and commercial centers.

10. On January 20, 1995, the Kopperl Exchange filed a petition for ELCS between it and various exchanges, including the Meridian and Whitney Exchanges.

DOCKET NO. 14256

INTERIM ORDER

11. The Kopperl Exchange is served by Texas-Alltel, and it is in the Dallas LATA. The Meridian Exchange is served by SWB, and is in the Waco LATA. The Whitney Exchange is served by Contel, and is in the Waco LATA.
12. The parties to the proceeding are the petitioning Kopperl Exchange, Contel, SWB, and General Counsel. A hearing on the merits was not held because there are no contested issues. There is no statutory deadline for this proceeding.
13. The Kopperl Exchange is within 22-miles of the Meridian and Whitney Exchanges.
14. An affirmative vote of over 70 percent of those subscribers that voted in the balloting favored expanding local calling scope from the Kopperl Exchange to the Meridian and Whitney Exchanges.
15. The Kopperl Exchange consists of a small community. A portion of the exchange is located in Bosque County, and Meridian is the county seat. All essential state and county offices are located in the Meridian Exchange.
16. The local electric utility, Texas-New Mexico Power Company (TNP), is located in Meridian.
17. Many businesses in Meridian provide services and products vital to Kopperl. The businesses consists of, but are not limited to, full-line grocery market, lumber and hardware outlet, financial services, police, Bosque County Sheriff, and Texas State troopers, the newspaper, limited medical facilities, pharmacies, and convalescent facilities.
18. Numerous citizens in the Kopperl Exchange are employed in the Meridian Exchange.
19. The Whitney Exchange provides the primary emergency medical service to citizens in the Kopperl Exchange.

20. The Whitney Exchange provides employment and commercial services for the residents of the Kopperl Exchange.

21. There is a community of interest between the Kopperl Exchange and the Meridian Exchange. The exchanges are within 22 miles of each other. In addition, the petitioners proved a community of interest with the Meridian Exchange in the following ways: affirmative vote of the subscribers returning ballots; commonality of electric utility service center; commonality of commercial and employment centers; and, commonality of local government.

22. There is a community of interest between the Kopperl Exchange and the Whitney Exchange. The Kopperl Exchange and the Whitney Exchange are within 22 miles of the Kopperl Exchange. In addition, the petitioners proved a community of interest with the Whitney Exchange in the following ways: affirmative vote of the subscribers returning ballots; commonality as commercial and employment centers; and, commonality of medical providers and hospitals.

23. No issues of law or fact are disputed by any party.

24. No hearing on the merits or Commission action is necessary and administrative review is warranted.

Conclusions of Law

1. The Commission has jurisdiction in this proceeding pursuant to the Public Utility Regulatory Act of 1995, S.B. 319, §§ 1.101, 3.051, 3.151, 3.155, 2.201, 3.251, and 3.304, 74th Leg., R.S. 1995.

2. The standards for community of interest for ELCS in Texas are established in § 3.304(a)(2) of PURA and in P.U.C. SUBST. R. 23.49(c)(3).

3. Pursuant to P.U.C. SUBST. R. 23.49(c)(11), ELCS petitions filed prior to the adoption of P.U.C. SUBST. R. 23.49(c) must satisfy the criteria contained within the rule.

DOCKET NO. 14256

INTERIM ORDER

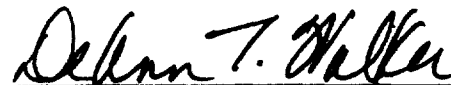
4. To meet the community of interest standard, P.U.C. SUBST. R. 23.49(c)(3)(B) and § 3.304(a)(2) of PURA require a petitioning exchange to have either a contiguous boundary with the petitioned exchange or require the exchanges covered by the petition to be within a distance of 22 miles of each other. As established in Finding of Fact No. 13, the petitioning exchange satisfies the requirement.
5. P.U.C. SUBST. R. 23.49(c)(3)(C) provides that if the exchanges are greater than 22 miles apart, but less than 50 miles, the petitioners must show a community of interest through schools, hospitals, local governments, business centers, or other relationships so that, without ELCS, a hardship on the residents of the petitioning exchange would occur.
6. An ELCS docket that has the two exchanges within 22 miles of each other or which are contiguous to each other constitutes a *per se* showing of community of interest. Judge Greene requires, however, a greater showing of community of interest in order to grant a waiver of the MFJ; thus, the Commission shall address additional findings of a community of interest between the exchanges in this type of proceeding.
7. A community of interest standard similar to P.U.C. SUBST. R. 23.49(b)(2) is not applicable to proceedings involving ELCS.
8. The standards contained within § 3.304(a)(2) of PURA and P.U.C. SUBST. R. 23.49(c)(3)(B) apply to both contested and uncontested ELCS proceedings.
9. P.U.C. SUBST. R. 23.49(c)(5)(D)(ii) and § 3.304 of PURA require an affirmative vote of at least 70 percent of those subscribers returning ballots to establish a community of interest. The statute and rule do not require an affirmative vote of at least 70 percent of all subscribers in the exchange.
10. This petition does not constitute a major rate proceeding as defined by P.U.C. PROC. R. 22.2.

11. All requirements for administrative review under P.U.C. PROC. R. 22.32(a) have been satisfied; therefore, the proposed petition may be approved by a Hearings Officer under the administrative review provisions of P.U.C. PROC. R. 22.32 as authorized by § 1.101(d) of PURA.

In accordance with the findings of fact and conclusions of law, the Commission issues the following Interim Order:

1. The petitioners in the petition filed by the Kopperl Exchange for expanded local calling service to the Meridian and Whitney Exchanges have shown a community of interest between the exchanges.
2. Within thirty (30) days of this Interim Order, GTE Southwest, Inc. (GTE) and Southwestern Bell Telephone Company (SWB) are **DIRECTED** to file a request for a waiver of the Modified Final Judgment with the Department of Justice or Judge Harold H. Greene, as appropriate.
3. Within thirty (30) days of the receipt of the ruling by Judge Greene, GTE and SWB are **DIRECTED** to file Judge Greene's judgment in this docket.
4. This Interim Order is effective October 9, 1995.

Respectfully submitted,



DEANN T. WALKER
ADMINISTRATIVE LAW JUDGE

Kopperl To Meredian

**Dallas LATA
552**

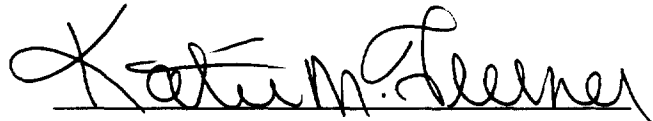


6 0 6 12 Miles

- Texas ALLTEL Telephone Exchange
- Southwestern Bell Telephone Exchange

CERTIFICATE OF SERVICE

I, Katie M. Turner, hereby certify that the foregoing, "PETITION OF SOUTHWESTERN BELL TELEPHONE COMPANY" in Docket No. 96-159 has been filed this 29th day of August, 1997 to the Parties of Record.

A handwritten signature in cursive script, reading "Katie M. Turner", is written over a horizontal line.

Katie M. Turner

August 29, 1997

Texas Public Utility Commission
1701 North Congress
Austin, Texas 78701